

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Kelly Lyon	Team: Squad #10	CCRB Case #: 201810384	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Thursday, 10/04/2018 4:00 PM	Location of Incident: 71st Precinct stationhouse	Precinct: 71	18 Mo. SOL 4/4/2020	EO SOL 11/19/2020	
Date/Time CV Reported Thu, 12/13/2018 3:29 PM	CV Reported At: CCRB	How CV Reported: Phone	Date/Time Received at CCRB Thu, 12/13/2018 3:29 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Anton Baird	08458	956407	071 PCT
2. SGT Gesner Charles	03036	925061	071 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POF Karen Londonocristancho	05397	961899	071 PCT
2. POM Adrian Duran	19454	959612	071 PCT
3. POF Sashawn Clarke	19957	958413	HOU
4. POM Roger Delfosse	14900	955863	071 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Anton Baird	Force: Police Officer Anton Baird used physical force against § 87(2)(b)	
B.POM Anton Baird	Abuse: Police Officer Anton Baird threatened to arrest § 87(2)(b)	
C.SGT Gesner Charles	Abuse: Sergeant Gesner Charles threatened to arrest § 87(2)(b)	
D.SGT Gesner Charles	Abuse: Sergeant Gesner Charles issued a summons to § 87(2)(b)	

Case Summary

On December 13, 2018, § 87(2)(b) filed this complaint with the CCRB by telephone.

On October 4, 2018, at approximately 4:00 p.m., § 87(2)(b) was outside of the 71st Precinct stationhouse in Brooklyn taking photographs of the street to send to his insurance company because he had been in a vehicle accident in the vicinity on September 7, 2018. An unidentified male pointed § 87(2)(b) out to PO Anton Baird, of the 71st Precinct. § 87(2)(b) entered the stationhouse to pick up the accident report (**BR 01**) for his vehicle accident. PO Baird followed § 87(2)(b) inside and asked him what he needed. § 87(2)(b) did not want to speak to PO Baird and refused to leave the stationhouse without his accident report. PO Baird pushed § 87(2)(b) to make him leave the stationhouse (**Allegation A: Force – Physical force**, § 87(2)(g)). PO Baird allegedly informed § 87(2)(b) that he would be arrested if he attempted to re-enter the stationhouse (**Allegation B: Abuse of Authority – Threat of Arrest**, § 87(2)(g)). § 87(2)(b) remained outside of the stationhouse and asked to speak to a supervisor. PO Baird informed Sergeant Gesner Charles, of the 71st Precinct, that § 87(2)(b) would not leave the vicinity and § 87(2)(b) also told an auxiliary officer to “suck a dick.” Sgt. Charles went outside to speak to § 87(2)(b) and informed him that he could be arrested (**Allegation C: Abuse of Authority – Threat of Arrest**, § 87(2)(g)). Sgt. Charles told § 87(2)(b) to wait outside for his accident report. PO Baird went inside the stationhouse to retrieve § 87(2)(b)'s accident report and spoke to Sgt. Charles about issuing § 87(2)(b) a summons. PO Baird issued § 87(2)(b) a summons (**BR 02**) § 87(2)(a) 160.50 with Sergeant Charles's approval (**Allegation D: Abuse of Authority – Improper summons**, § 87(2)(g)).

Body-worn camera footage was obtained from PO Baird, PO Karen Londono Cristancho, PO Adrian Duran, PO Sashawn Clarke, and PO Roger Delfosse, all of the 71st Precinct. The body-worn camera videos are found in IAs 27 to 34 (**BR 03, BR 04, BR 05, BR 06, BR 07, BR 08, BR 09, and BR 10**) and these capture portions of the incident and relevant clips will be discussed below. The stationhouse footage was expired and there are no other known videos that capture § 87(2)(b)'s and PO Baird's initial interaction inside of the stationhouse.

Findings and Recommendations

Allegation (A) Force: Police Officer Anton Baird used physical force against § 87(2)(b)

It is undisputed that § 87(2)(b) entered the 71st Precinct stationhouse to pick up an accident report. § 87(2)(b) refused to let PO Baird help him retrieve the report. PO Baird told § 87(2)(b) to leave the stationhouse and § 87(2)(b) refused. PO Baird made physical contact with § 87(2)(b) to make him leave the stationhouse, the details of the force used and § 87(2)(b)'s behavior inside the stationhouse are disputed.

§ 87(2)(b) consistently stated in his initial complaint, phone statement, and verified statement (**BR 11, BR 12, and BR 13**) that when he entered the stationhouse, PO Baird asked § 87(2)(b) what he was doing and what he needed. § 87(2)(b) told PO Baird in a calm voice that he did not need his help and wanted to speak to someone at the desk. PO Baird told § 87(2)(b) that no one else was able to help him and he needed to leave. PO Baird grabbed § 87(2)(b)'s left bicep and either pushed or pulled § 87(2)(b) by the arm but there was not enough momentum to cause § 87(2)(b) to involuntarily take a step. § 87(2)(b) rolled his

left shoulder back and walked out of the stationhouse on his own. § 87(2)(b) felt pain but did not seek medical treatment and there were no marks or bruises.

PO Baird stated (BR 14) that § 87(2)(b) entered the stationhouse and PO Baird followed and asked him why he was there. § 87(2)(b) replied, "Fuck you, suck my dick." PO Baird then asked § 87(2)(b) to leave three times and § 87(2)(b) replied, "No, fuck you." PO Baird placed his hand on § 87(2)(b)'s left shoulder with an open palm and applied forward momentum to escort him to the front of the stationhouse. § 87(2)(b) initially resisted by not moving his body. PO Baird escorted § 87(2)(b) three to five feet to the front of the stationhouse. PO Baird pushed § 87(2)(b) on the shoulder and the contact lasted no longer than a second.

PO Baird's body-worn camera footage found in IA 28 (BR 04) was turned on as § 87(2)(b) is walking toward the exit of the stationhouse. At 00:03 seconds, § 87(2)(b) stops in the doorway and turns his body slightly in the direction of PO Baird. At 00:08 seconds, PO Baird says, "You're still in the way," and grabs § 87(2)(b)'s left shoulder with his right hand. PO Baird extends his left arm as § 87(2)(b) raises his right hand to his chest. PO Baird's left hand makes contact with § 87(2)(b)'s right hand. PO Baird pushes with both arms extended and § 87(2)(b) take two to three steps back. PO Baird says, "Go on. Don't come in here, you're too disrespectful."

PO Londono Cristanchco's body-worn camera footage found in IA 27 (BR 03) captures this portion of the incident from a different angle. At 00:54 seconds, § 87(2)(b) is shown walking toward the exit of the stationhouse. § 87(2)(b) stops in the doorway and turns his body to face the entrance. At 00:58 seconds, PO Baird enters the frame and places his right hand is on § 87(2)(b)'s left shoulder. PO Baird then places both of his hands on § 87(2)(b)'s chest and pushes § 87(2)(b) with both arms extended causing § 87(2)(b) to take two to three steps backward. As § 87(2)(b) is being pushed, § 87(2)(b) raises his right hand and places it on PO Baird's left wrist and pushes PO Baird's arm to the left, away from his body.

§ 87(2)(b) and PO Baird consistently stated that § 87(2)(b) refused to comply with PO Baird's initial command to leave the stationhouse. Body-worn camera footage showed § 87(2)(b) blocking the entrance of the stationhouse and not complying with instructions to move before PO Baird pushed § 87(2)(b).

Patrol Guide procedure 221-01 (BR 15) states that a reasonable use of force may be used to gain control of a subject and to ensure the safety of a member of service or a third person.

Because § 87(2)(b) refused to comply to a lawful command to leave the stationhouse, PO Baird's push was reasonable to compel § 87(2)(b) to comply with his orders. § 87(2)(b)

Allegation (B): Abuse of Authority: Police Officer Anton Baird threatened to arrest

§ 87(2)(b)

Allegation (C): Abuse of Authority: Sergeant Gesner Charles threatened to arrest § 87(2)(b)

Allegation (D): Abuse of Authority: Sergeant Gesner Charles issued a summons to § 87(2)(b)

It is undisputed that PO Baird told § 87(2)(b) that he could be arrested. Sgt. Charles also informed § 87(2)(b) that he could be arrested. § 87(2)(b) told PO Baird to "eat a dick" after he was pushed outside of the stationhouse. At the end of the incident, § 87(2)(b)

§ 87(2)(b) stated in his verified statement (**BR 13**) that he used a normal speaking voice when he said, “I came here to get something, I don’t need your help,” to PO Baird inside the stationhouse. When PO Baird grabbed § 87(2)(b)’s arm, § 87(2)(b) said, “That’s bullshit. Why are you fucking touching me?” PO Baird then said, “If you don’t get out I’m going to arrest you.” § 87(2)(b) did not describe his interaction with Sgt. Charles other than that Sgt. Charles came outside of the stationhouse and asked him what he needed and then went back inside.

§ 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(b) In his CCRB interview (**BR 14**), PO Baird stated that § 87(2)(b) said, “Fuck you, mind your business,” to an auxiliary officer and showed his middle finger before entering the stationhouse. Once inside, § 87(2)(b) said, “Fuck you, suck my dick,” to PO Baird. PO Baird stated to the CCRB that § 87(2)(b) appeared confrontational based on his body language and facial expression. There were four or five civilians within the waiting area who appeared alarmed by the interaction and some civilians may have exited the stationhouse. PO Baird asked § 87(2)(b) to leave the stationhouse three times. § 87(2)(b) refused to leave the stationhouse and resisted moving by not moving his body when PO Baird was escorting him out of the stationhouse. PO Baird told § 87(2)(b) that he could be arrested for disorderly conduct. § 87(2)(b) refused to leave the area in front of the stationhouse and asked to speak to a sergeant. PO Baird went inside the stationhouse and told Sgt. Charles that § 87(2)(b) was cursing when he came inside of the stationhouse to pick up a report. PO Baird also told Sgt. Charles that § 87(2)(b) said, “Fuck you, suck my dick,” to him and an auxiliary officer and § 87(2)(b) was now outside of the stationhouse refusing to leave. Sgt. Charles spoke to § 87(2)(b) and said that § 87(2)(b) could obtain his accident report, but he would not be allowed to come back inside of the stationhouse. PO Baird made the decision to write § 87(2)(b) a summons for § 87(2)(a) 160.50 and gave it to § 87(2)(b) with his accident report at the end of the incident.

Sgt. Charles stated (**BR 17**) that he did not see § 87(2)(b) inside of the stationhouse. Sgt. Charles became aware of § 87(2)(b)’s presence because he could hear § 87(2)(b) yelling outside of the stationhouse. Sgt. Charles was near the desk approximately five feet from the entrance of the stationhouse when he heard § 87(2)(b) yelling. There were five civilians in the waiting area who were looking in § 87(2)(b)’s direction. PO Baird came inside, and informed Sgt. Charles that § 87(2)(b) had been cursing and taking pictures. Sgt. Charles went outside of the stationhouse and informed § 87(2)(b) that he would be issued a summons for disorderly conduct if he continued cursing and he would not be allowed back inside of the stationhouse. Sgt. Charles also informed § 87(2)(b) that he could be arrested for disorderly conduct. Sgt. Charles went back inside the stationhouse and had no further interaction with § 87(2)(b). Sgt. Charles was unable to identify the auxiliary officer.

PO Baird’s body-worn camera footage found in IA 28 (**BR 04**) opens with four adults and one child seated in the waiting area of the stationhouse. Beginning at 00:08 seconds, § 87(2)(b)’s right hand is in front of his chest when PO Baird extends his arms to push § 87(2)(b) away from the entryway to the stationhouse. At 00:32 seconds, § 87(2)(b) says, “You can eat a dick like I said.” § 87(2)(b) remains outside of the stationhouse, makes a phone call, and speaks to PO Londono Cristancho about talking to a sergeant. At 2:40 minutes, PO Baird says, “I’m not harassing you, you’re harassing everybody else over here. That’s why I

asked you to leave. You're lucky you're not under arrest right now." At 6:40 minutes, Sgt. Charles speaks to § 87(2)(b) and says, "Did you tell an officer to suck a dick?" § 87(2)(b) says, "I told whoever was pointing at me 'suck a dick.'" Sgt. Charles says, "That's discourteous. That's dis con, too, you could be arrested for that." Starting at 12:06 minutes, PO Baird approaches Sgt. Charles inside the stationhouse. Sgt. Charles says, "If he acts up again." PO Baird says, "That's what he's doing right now." Sgt. Charles replies, "Then it's a problem," and PO Baird says, "Yeah. He said it to me." PO Baird then writes a summons for § 87(2)(a) 160.50 and hands it to § 87(2)(b) with his accident report and ID at the end of the video.

PO Baird issued § 87(2)(b) summons § 87(2)(b), § 87(2)(a) 160.50

New York Penal Law § 140.05 (BR 18) states a person is guilty of trespass when the individual knowingly enters or remains unlawfully in or upon premises.

New York Penal Law § 240.20 (BR 19) states a person is guilty of disorderly conduct when, with intent to cause public inconvenience, annoyance or alarm, or recklessly create a risk thereof, engages in violent or threatening behavior, makes unreasonable noise, or uses abusive or obscene language or gestures in a public place.

In People v Baker 20 N.Y.3d 354 (2013) (**BR 20**), the court found that isolated statements using coarse language to criticize the actions of a police officer, unaccompanied by provocative acts or other aggravating circumstances, will rarely afford a sufficient basis to infer the presence of the "public harm" mens rea necessary to support a disorderly conduct charge.

Although § 87(2)(b) and PO Baird disputed whether § 87(2)(b) voluntarily left the stationhouse or resisted leaving the stationhouse, the body-worn camera video showed § 87(2)(b) stopping in the entryway and raising his arm when BO Baird pushed him away from the entrance. PO Baird stated that he asked § 87(2)(b) to leave the stationhouse three times and Sgt. Charles also said that he did not want § 87(2)(b) to re-enter the stationhouse due to his behavior. § 87(2)(b)'s refusal to leave the stationhouse after being instructed would have given PO Baird probable cause to arrest § 87(2)(b) for trespassing. § 87(2)(g)

By the time Sgt. Charles spoke to § 87(2)(b) no longer could have been arrested for trespassing as he remained outside of the premises. Sgt. Charles incorrectly stated that § 87(2)(b) could be arrested for disorderly conduct for saying "suck a dick" to an officer. As shown in People v Baker 20 N.Y.3d 354, there must be an element of public harm for there to be probable cause to arrest someone for disorderly conduct. Although civilian bystanders watched the conversation, the body-worn camera footage did not show any indication that § 87(2)(b) was inciting alarm inside of the stationhouse. Additionally, there were no public spectators gathered outside of the stationhouse and the only bystanders were other officers. Because there was not an element of public harm, Sgt. Charles would not have probable cause to arrest § 87(2)(b) § 87(2)(g)

Because Sgt. Charles, as PO Baird's supervisor, misinformed PO Baird by stating discourteous language constituted disorderly conduct, the corresponding allegation was pleaded against Sgt. Charles. PO Baird also conferred with Sgt. Charles before issuing § 87(2)(b) the disorderly conduct summons. § 87(2)(b), § 87(2)(a) 160.50

§ 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) has been a party (**BR 21**).
- PO Baird has been a member of service for four years and has been a subject in three CCRB complaints and six allegations, none of which were substantiated. § 87(2)(g)
- Sgt Charles has been a member of service for 19 years and has been a subject in six CCRB complaints and 10 allegations, of which four were substantiated.
 - CCRB case 201211897 involved a substantiated allegation of a vehicle search against Sgt. Charles. The Board recommended Command Discipline and the NYPD declined to prosecute.
 - CCRB case 201802489 involved substantiated allegations of speaking discourteously, sexual harassment, and romantic proposition against Sgt. Charles. The Board recommended Command Discipline B and the NYPD has not yet imposed discipline.

Mediation, Civil and Criminal Histories

- On January 4, 2019, this case was sent to mediation and on February 13, 2019, the case was returned to investigation because PO Baird rejected mediation.
- § 87(2)(b), § 87(2)(a) 160.50
- § 87(2)(b)
- As of May 3, 2019, the New York City Office of the Comptroller has no record of a Notice of Claim being filed in regards to this complaint (**BR 23**).

Squad No.: 10

Investigator: _____
Signature Print Title & Name Date

Squad Leader: _____
Signature Print Title & Name Date

Reviewer: _____
Signature Print Title & Name Date